

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION RECEIVED
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JUL 19 2006

Federal Communications Commission
Office of Secretary

In the Matter of

Amendment of Section 73.202(b),
 Table of Allotments, FM Broadcast Stations
 (Boulder Town, Levan, Mt. Pleasant and
 Richfield, UT)

MB Docket No. 04-258
 RM-11000
 RM- 11149

To: Office of the Secretary
 Attention: Assistant Chief, Audio Division, Media Bureau

**REPLY TO OPPOSITION TO
 PETITION FOR PARTIAL RECONSIDERATION**

SANPETE COUNTY BROADCASTING CO. ("**Sanpete**"), licensee of Station KLGL (formerly KCYQ), Richfield, Utah (Facility ID 41895), and successor-in-interest to MID-UTAH RADIO, INC. ("**Mid-Utah**"), by its undersigned counsel, and pursuant to §§ 1.429(g) and 1.4(h) of the Commission's rules, hereby respectfully replies to the Opposition to Petition for Partial Reconsideration ("**Opposition**") filed in this proceeding by Micro Communications, Inc. ("**Micro**") on July 6, 2006. As will be shown herein, the Opposition offers no justifiable basis for either the dismissal or denial of Sanpete's Petition for Partial Reconsideration (the "**Petition**").

I. Micro's Procedural Argument Fails; The Petition was Timely Filed.

1. The Petition was filed on June 23, 2006, within 30 days of the May 24, 2006 publication of *Report and Order*, DA 05-956 ("**R&O**") in the Federal Register, in accordance with the requirements of §§1.429 and 1.4(b)(1) of the Commission's rules. Micro contends that §1.4(b)(1) does not apply in this instance, arguing that the Petition should be dismissed as untimely because it was not filed within 30 days of public notice of the R&O pursuant to §§

1.106 and 1.4(b)(3) of the Rules. Micro is simply wrong about the procedural rules that apply here.

2. More than a dozen years ago, the Media Bureau clarified that broadcast allotment rulemakings are rulemakings of “general” (as opposed to “particular”) applicability for purposes of time computations under §1.4 of the Commission’s rules, and settled the question that §1.4(b)(1) rather than §1.4(b)(3), applies to broadcast allotment rulemakings. See *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Prineville and Sisters, OR)*, 8 FCC Rcd 4471 (Media Bur. 1993). Thus, Micro’s argument that Sanpete’s Petition should have been filed within 30 days of the release of the *R&O* pursuant to §1.4(b)(3), rather than within 30 days of the Federal Register publication of the *R&O* pursuant to §1.4(b)(1) is wrong, as a matter of well settled law. Per the holding of *Prineville and Sisters, OR*, the Petition was properly and timely filed. Accordingly, the Opposition’s procedural argument fails and the merits of the Petition must be considered.

II. Facts about Gray Area and Population

3. Turning now to Micro’s substantive argument, i.e., that the Petition erred in asserting that the gray area created by the Counterproposal to relocate Channel 229C from Richfield to Mount Pleasant, Utah, is unpopulated, Sanpete concedes that as a general matter, Micro is correct.¹ . Importantly, however, Micro’s Opposition also errs in this connection. Not only is the actual gray area created by the Counterproposal not where Micro alleges, but the actual population in the actual gray area is significantly less than the 5,511 population in the gray area alleged by Micro. Indeed, as will be demonstrated below, contrary to Micro’s

¹ Regrettably, an inadvertent technical error in the population computations conducted by Mid-Utah’s consulting engineer led to the Petition’s erroneous claim that no population resides within the gray area created by the Counterproposal.

claims, the actual facts and circumstances relating to the Counterproposal's gray area provide ample support for the grant of the Petition for Partial Reconsideration and the grant of the Counterproposal..

4. Submitted herewith as Exhibit A is an Engineering Statement prepared by Sanpete's consulting engineer, Kevin Terry, dated July 11, 2006, including Maps 1, 2 and 3 attached thereto. As noted by Mr. Terry and illustrated on Map 1, the area that Micro alleges will be gray area created by the Counterproposal actually has two aural services - - KCYQ (formerly KLGL) (Facility ID 72224), operating on Channel 249C at Elsinore, Utah, and KMXD (Facility ID 164258), a station currently under construction, which will operate on Channel 263C at Monroe, Utah.

5. It may be an unsettled matter whether a station under construction should be counted as a remaining service. However, under the unique circumstances presented here, KMXD should certainly be included as a remaining service. Importantly, in this case, Sanpete, the successor to Mid-Utah and proponent of the Counterproposal, is also the permittee of KMXD. As important, the construction of KMXD is currently underway as detailed in Mr. Terry's Engineering Statement. See Exhibit A, p. 2. Thus, KMXD cannot be viewed in the same category as an unconstructed construction permit held by an unrelated, uninvolved permittee. Indeed, to assure the Commission that at least two aural services will continue to be provided in the area that Micro alleges would be gray area, Sanpete hereby commits that if the Counterproposal is granted, it will complete the construction of KMXD and place it in operation *before* Channel 229C is relocated from Richfield to Mt. Pleasant. Moreover, Sanpete is willing to accept a condition on the Channel 229C construction permit to the effect that KMXD must be operational before Channel 229C is moved from Richfield to Mt. Pleasant. Clearly then, the unique circumstances here guarantee that the area alleged

by Micro to be gray will continue to have a minimum of two aural services if the Counterproposal is granted and Channel 229C relocates to Mount Pleasant. Accordingly, KMXD must be included as a remaining service to Richfield.

6. As noted in Mr. Terry's Engineering Statement at page 2 and illustrated on Map 2, there *is* a small, populated gray area created by the Counterproposal, albeit not the area alleged by Micro. According to Mr. Terry, the actual gray area created by the Counterproposal contains a population of only 1,947 (not 5,511, as alleged by Micro). More importantly, however, in view of the fact that the Counterproposal also will create first local transmission service for Mount Pleasant's population of 2,707 and thereby will further the Commission's FM allotment Priority 3, the public interest dictates that first local service to the larger population of Mount Pleasant must be favored over retaining second aural reception service to a smaller population in the gray area. Hence, contrary to Micro's arguments, partial reconsideration of the R&O with respect to the denial of the Counterproposal is wholly justified by the actual, corrected facts in this case because the Counterproposal does, in fact, further the Commission's allotment priorities.

To underscore this point, as demonstrated originally in the Counterproposal and reiterated in Mr. Terry's attached Statement at p. 3 and Map 3, it must be remembered that the Counterproposal also will provide first aural reception service to an area of more than 750 square kilometers. Even though the newly covered area is remote, mountainous and without a sizable residential population, Utah State Highway 191 traverses the area. Hence, the Mount Pleasant station will be the only radio station that could provide emergency information to the many travelers (more than 450 vehicles daily - - See Exhibit A, p.2) and the residents in the area.

III. Conclusion

The Petition seeking partial reconsideration of the R&O should be granted. As demonstrated in Section I above, Micro's Opposition offers no procedural basis for the dismissal of the Petition. Likewise, as shown in Section II, Micro's complaint about the Petition's factual error regarding gray area population has been duly corrected here. And, the now corrected facts clearly demonstrate that Micro's Opposition is meritless.

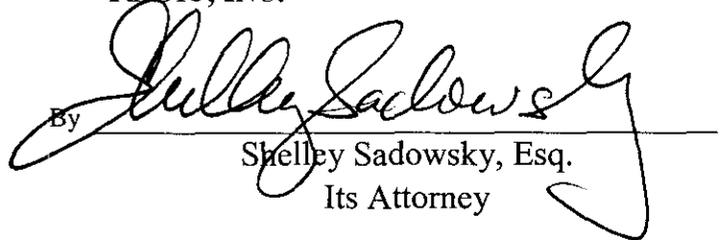
WHEREFORE, for the reasons set forth above, Sanpete County Broadcasting Co., successor-in-interest to Mid-Utah Radio, Inc., respectfully urges the Commission to grant reconsideration of that part of the R&O which denied the Counterproposal, and grant the Counterproposal to re-allot Channel 229C to Mt. Pleasant, Utah, for use by Sanpete's Station assigned Facility ID 41895.

Respectfully submitted,

SANPETE COUNTY BROADCASTING CO.

SUCCESSOR-IN-INTEREST TO MID-UTAH
RADIO, INC.

By



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July 19, 2006

ENGINEERING STATEMENT
In Support of
Reply of Sanpete County Broadcast Co. to
Opposition to Petition For Partial Reconsideration
MB Docket 04-258

This Engineering Statement is provided in support of Sanpete County Broadcasting Co.'s ("Sanpete") Reply to Opposition to Petition for Partial Reconsideration in MB Docket 04-258 filed by Micro Communications, Inc ("Micro"). Sanpete is the successor-in-interest to Mid-Utah Radio, Inc., which filed the Counterproposal in this Docket to move KCYQ (now KLGL) from Richfield, Utah, to Mount Pleasant, Utah, on Channel 229C (the "Counterproposal").

Micro's Opposition includes an engineering statement which demonstrates that the undersigned's Engineering Statement filed with the Petition for Partial Reconsideration erred in claiming that the gray area created by the Counterproposal would be unpopulated. The purpose of this Engineering Statement is to demonstrate that although Micro is correct that the undersigned's Engineering Statement inadvertently erred in showing no population in the gray area (which error will be corrected herein), nonetheless, Micro is wrong about the location of the gray area and its population count.

Micro states that a gray area containing a population of 5,511 persons would be created as a result of deleting Channel 229C from Richfield. It appears that Micro's engineering consultant overlooked Station KMXD, Channel 263C Monroe, UT (Facility ID #164258)¹, in his study. Map 1 demonstrates that in addition to KLGL operating on Channel 249C Elsinore, UT (Facility #72224)², KMXD will cover the entire region that Micro claims as being newly created gray area. Under most circumstances, Stations that are represented by an unbuilt construction permit cannot be relied upon as a remaining service because, frequently, these unbuilt construction permits are not assigned to the proponent involved in the rulemaking in question and, therefore, the proponent cannot make the

¹ Sanpete is not only the successor in interest to Mid-Utah, but is also the permittee of KMXD. Currently, Sanpete is in the process of constructing the new KMXD facilities pursuant to BMPH-20051116ADA. To date, Sanpete has constructed road to the site, and is in the process of excavating the foundation for the tower and transmitter building.

² Facility #72224 is currently assigned the call letters KCYQ. However, when Mid-Utah's Counterproposal was filed, this facility was assigned the call letters KLGL. For the sake of consistency, this facility shall be referred to by the old KLGL call letters in the instant Statement.

representation that the unbuilt station will ever be constructed. However, these circumstances are unique in that Sanpete *is* the permittee of KMXD and *is* in the process of constructing the new station. Construction activities are slated to proceed throughout the summer of 2006 but, because of the extremely short construction season at 12,000 feet above sea level, the project will not be completed until the summer of 2007. Nonetheless, even if the Commission were to grant the Petition for Partial Reconsideration and Counterproposal to allow KCYQ to move to Mount Pleasant on the date hereof, Sanpete could not expect to receive a construction permit to implement the move until late in the fall of 2006 at the earliest. A construction permit grant at that time would be too late in the year for the commencement of construction activities for the Mount Pleasant facility since it, too, is located high in the Utah mountains. Thus, since construction is already well underway for the KMXD facility, it will be finished before the KCYQ Mount Pleasant facility could be completed. Therefore, KMXD can be relied upon as a remaining service at Richfield.³

Although gray area is not created in the region where Micro asserts, it *is* created at another location. Map 2 illustrates where the actual gray area is created. Previously, the undersigned had erroneously noted that no population existed in this area. Due to an unknown technical difficulty encountered while generating a population report for the gray area, software indicated that no population resided in this area. After further study, the undersigned has determined that 1,947 persons do reside in this gray area. Nonetheless, the creation of first local transmission service for Mount Pleasant's larger population of 2,707 residents is preferred over retaining second aural reception service to the smaller population of 1,947 persons living in the gray area. Therefore, contrary to Micro's claim, the Counterproposal furthers the Commission's allotment priorities.

Finally, it is worth noting that the Counterproposal to relocate KCYQ to Mount Pleasant will provide first aural reception service to over 750 square kilometers of east-central Utah. Map 3 illustrates the white area that is covered for the first time as a result of relocating KCYQ to Mount Pleasant. Although only 11 residents live in this vast area, Utah State Highway 191 traverses the white area which is traveled by over 450 vehicles per day.⁴ In this very remote, mountainous area of Utah,

³ In granting the Petition for Partial Reconsideration, the Commission can ensure that second aural reception service remains in this area by imposing a condition requiring KMXD to be constructed and operating pursuant to BMPH-20051116ADA *prior to* KCYQ discontinuing its current operations at Richfield. Since Sanpete is the licensee of KCYQ and the permittee of KMXD, this condition can be implemented with ease and efficiency.

⁴ Source: Traffic on Utah Highways 2004; Utah Department of Transportation Systems Planning and Programming Division; <http://www.dot.utah.gov/download.php/tid=1338/2004TrafficOnUtahHighways.pdf>

KCYQ at Mount Pleasant will be the only station able to provide emergency information to these residents and travelers.

Conclusion

The instant Engineering Statement demonstrates that the Counterproposal, contrary to Micro's claims, is consistent with the Commission's allotment priorities. The Counterproposal produces a first aural reception service to residents and travelers in over 750 square kilometers of rural east-central Utah under Priority 1 as well as first local transmission service to the 2,707 residents of Mount Pleasant, UT, under Priority 3. No white area is created and only limited gray area containing 1,947 persons is created as a result of the counterproposal triggering Priority 2. Since Priority 2 and 3 are given equal weight in furthering the Commission's allotment priorities, the larger population to be served at Mount Pleasant would tilt the scale in that direction over the smaller population residing in the gray area. For all the reasons stated, the Commission's reconsideration of its denial of the Counterproposal is in the public interest.

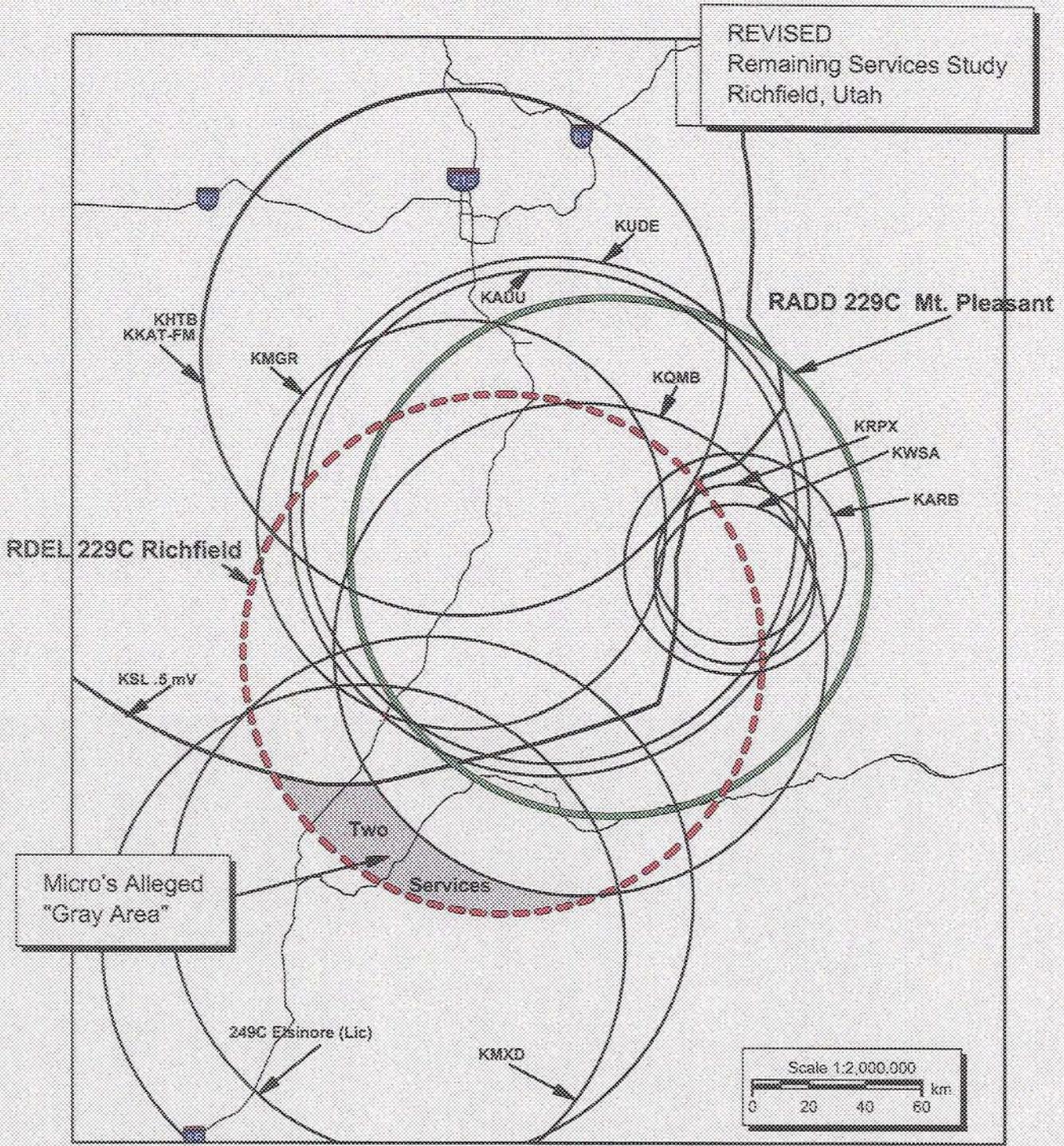
Respectfully submitted,



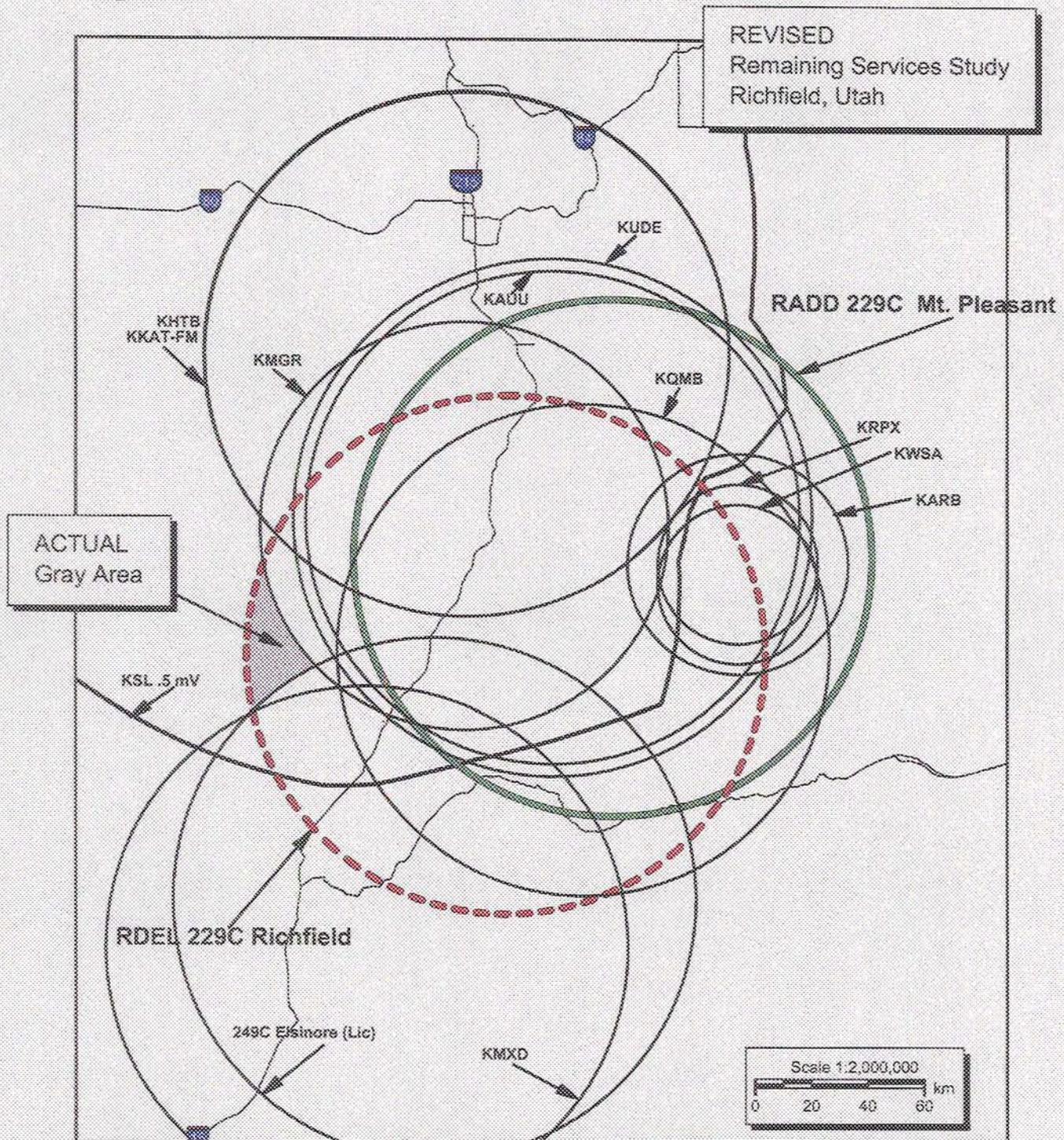
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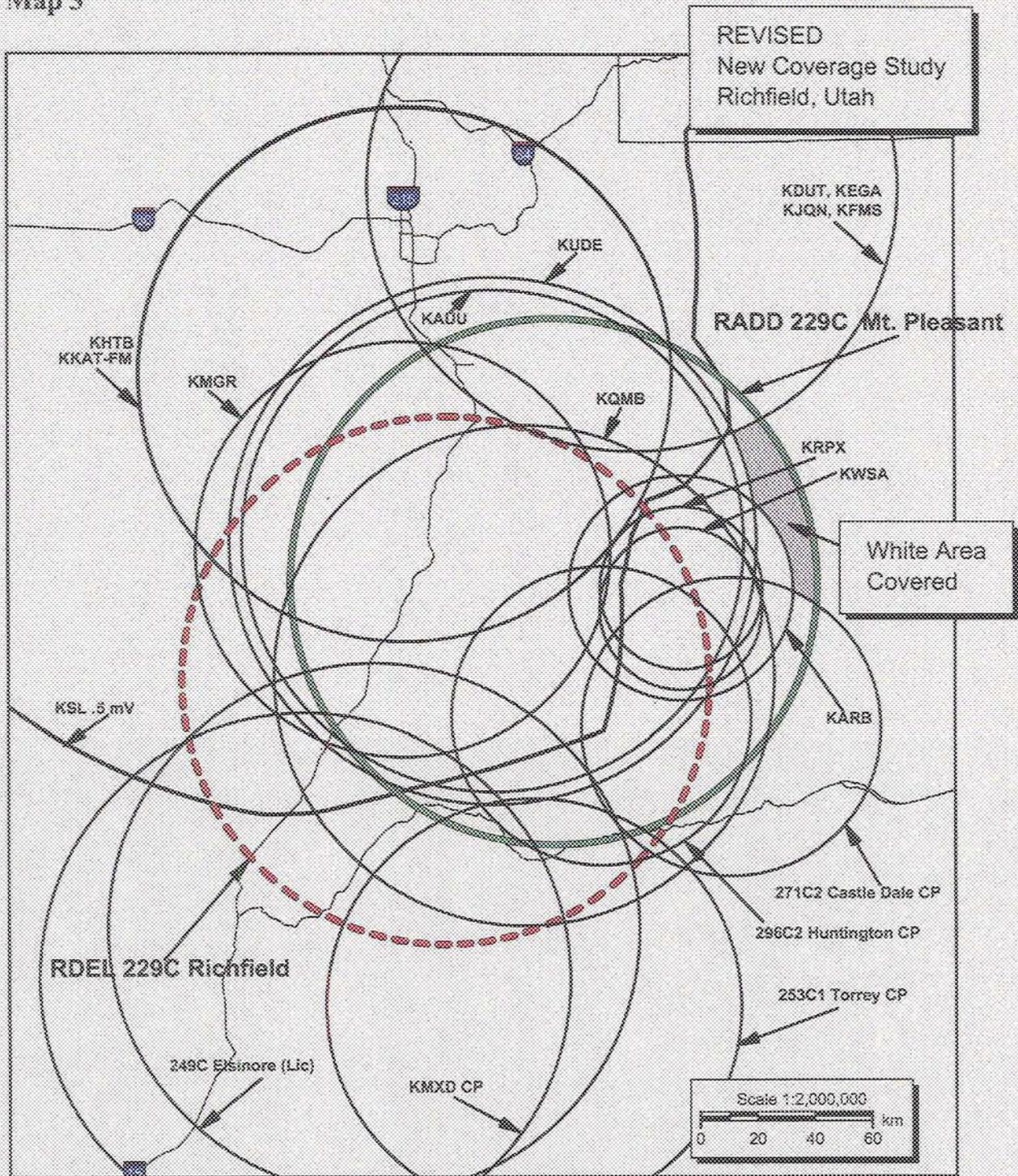
Map 1



Map 2



Map 3



CERTIFICATE OF SERVICE

The undersigned, an employee of **KATTEN MUCHIN ROSENMAN LLP**, hereby certifies that the foregoing **REPLY TO OPPOSITION TO PETITION FOR PARTIAL RECONSIDERATION** was mailed this date by First Class U.S. Mail, postage prepaid, and/or served electronically via e-mail to the following:

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July 19, 2006

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